It is necessary therefore to consider in whose favour discretion should be exercised. In the House of Lords case of *Blunt* v. *Blunt* [3] the learned Lord Chancellor, Viscount Simon, stated at page 531:—

"Speaking, however, more, generally it appears to me that cases may not infrequently arise in which each party, while proving the case for his or her petition, has been guilty of such conduct as by the terms of the statute entitles the Court to dismiss the petition, where injustice may be done if discretion is exercised in favour of one of the parties only. There is no reason in principle why, where both sides are in mercy, if the Judge decides to exercise his discretion, he should not exercise it in favour of both parties and pronounce the decree without drawing a distinction between them."

The Court when arriving at a decision must take into consideration (1) the position and interest of the child of the marriage, (2) the interest of the party with whom the petitioner has committed adultery with special regard to their future marriage, (3) the question whether, if the marriage be not dissolved, there is a prospect of reconciliation between the spouses, (4) the interest of the petitioner particularly as regards allowing him to remarry and live respectably, and finally (5) the interest of the community at large, judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down.

I am quite satisfied that this is a marriage which has utterly broken down and there is no prospect whatever of reconciliation between the spouses. The petitioner has stated that he wishes to marry the party with whom he has committed adultery.

The facts of this case are very similar to those in the case of *O'Brien* v. *O'Brien.*[4] In that case the Court of Appeal held that the case fell within the words of Lord Simon in *Blunt* v. *Blunt*, *supra*, and that the right order was for the Court, in the exercise of its discretion, to pronounce a decree *nisi* on the ground of adultery and on the cross-petition on the ground of desertion.

In all the circumstances of this case I have reached the conclusion that both parties should be granted a decree.

The discretion of the Court will be exercised in favour of the petitioner and the petitioner will be granted a decree *nisi* to be made absolute in three months, on the ground of the respondent's adultery with the co-respondent.

The respondent will be granted a decree *nisi*, to be made absolute in three months, on the ground that the petitioner has deserted the respondent without cause for a period of three years immediately preceding the presentation of the answer.

I will hear argument as to costs.

Order accordingly.

Solicitors: *S. Thillaimuthu; Lee Kok Liang.*

LOO PENG KEAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Hepworth J. March 6, 1964]
[Penang — Criminal Appeal No. 1 of 1964]

Penal Code, s. 224—Police officer arresting person on suspicion of being smuggler—Escaping from custody—Whether custody lawful—Conviction not sustainable unless detention escaped from is lawful.

A police boat on patrol duty in Penang Harbour stopped a speed boat coming from the direction of the Island and going towards Prai. In the boat were two persons, one of whom was the appellant, neither of whom had their identity cards on them. On examination of the speed boat it was found to be empty. Nothing was found on either of the occupants. Suspecting the appellant of being a smuggler the police detained the appellant, from which detention he escaped. He was consequently charged and convicted under section 224 of the Penal Code. On appeal,

Held: there were no reasonable grounds for suspicion that the appellant was guilty of an offence under the Customs Ordinance, 1952 or any regulation made under it. There was no ground for taking the appellant into custody and the custody was consequently unlawful. There was therefore no lawful detention within the meaning of section 224 of the Penal Code.

CRIMINAL APPEAL.

Eugene Khoo Oon-Jin for the appellant.

Wan Suleiman bin Pawan Teh (Deputy Public Prosecutor) for the respondent.

Hepworth J.: The appellant was charged in the Magistrate's Court, Penang, as follows:—

"That he on the 24th day of October, 1963, at about 1.50 a.m. at the Church Street Pier, Penang, intentionally escaped from the custody of one P.O. 149 Ahmad bin Senawi, in whose custody he was lawfully detained for the offence of behaving in a suspicious manner in a speed boat and that he has thereby committed an offence punishable under section 224 of the Penal Code".

The appellant was convicted of the said charge and bound over for 6 months in the sum of $200 in one surety under section 290 of the Criminal Procedure Code. From this conviction and order of binding over the appellant appealed.

The appellant's principal ground of appeal was that the charge did not disclose an offence known to law. Whilst admitting that the appellant was taken into custody and that he escaped from that custody it was contended on behalf of the appellant that the taking into custody was unlawful. It was submitted that the fact that the police officer (P.W.1) had thought that the appellant was behaving in a suspicious manner did not by itself entitle him to take the appellant into custody. It was submitted by the appellant that the prosecution had failed to adduce any evidence that he had committed any offence against either the Penal Code or the

Customs Ordinance or under any statute or law in existence in Malaya, because in fact no offence whatsoever had been committed by him.

The learned Deputy argued that it was perfectly clear to the appellant that he was being suspected of an offence under the Customs Ordinance, that the Police Sergeant is an "officer of customs" for the purposes of that Ordinance and that by virtue of section 112(1)(c) any officer of customs may arrest without warrant any person against whom a reasonable suspicion exists that he has been guilty of an offence against the Ordinance or any regulation made thereunder. Subsection (2) of that section provides that every person so arrested shall be taken to a police station or may be detained in the custody of the proper officer of customs. The learned Deputy argued that the appellant was in lawful custody and as he had escaped from it he had committed an offence under section 224 of the Penal Code.

The evidence showed that a police boat on patrol duty in Penang Harbour saw a speed boat coming from the direction of the Island and heading towards Prai. Having caught up with the speed boat the police stopped the boat and examined it. In the boat were two persons, one of whom was the appellant, neither of whom had their identity cards on them. On examination of the speed boat it was found to contain nothing. Nothing was found on either of the occupants. The police sergeant said that his suspicions were aroused because they had no identity cards and they could not give a satisfactory explanation as to why they were there. He further said in cross-examination that they had not committed any offence and he suspected the appellant of being a smuggler.

It was clear that there was no evidence of the commission of any offence against the Customs Ordinance, 1952 or any regulation made thereunder and accordingly although there may have been grounds for suspicion on the part of the police sergeant there were no reasonable grounds for suspicion that he had been guilty of an offence against the Ordinance or any regulation made thereunder. There was no ground therefore for taking the appellant into custody and the custody was consequently unlawful. Thus there was no lawful detention within the meaning of section 224 of the Penal Code.

I accordingly allowed the appeal and quashed the conviction and the order of binding over.

Appeal allowed.

RE SINGAPORE COMMERCIAL HOUSE & FACTORY EMPLOYEES' UNION

[O.C.J. (Chua J.) March 9, 1964]

[Singapore — Originating Summons No. 23 of 1964]

Trade Union—Rules and Constitution—Interpretation—"commercial house" and "factory employees"—Whether bus, theatre and film companies and bakery houses are "commercial houses"—Application under O.LII r. 5(1) of the Rules of the High Court, 1934.

Rule 3(a) of the Singapore Commercial House and Factory Employees' Union's Rules and Constitution provides "The Union is open to all workers....who are employed as commercial house and factory employees". On an application for the determination of the question whether workers employed in bus, theatre and film companies and in bakery houses are eligible to be members of the Union,

Held: (1) bus, theatre and film companies, and bakery houses are not "commercial houses" and employees of the bus, theatre and film companies are not eligible to be members of the Union;

(2) employees of bakery houses are eligible for membership of the Union as they come within the meaning of "factory employees".

APPLICATION.

T. T. Rajah for the applicant.

Tan Hoay Djin (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Chua J.: The applicant in this Originating Summons is the Singapore Commercial House and Factory Employees' Union (hereinafter called the Union), a trade union registered in Singapore. The application is for the determination of the question whether workers employed in bus companies, theatre and film companies and in "bakery houses" enumerated in paragraph 7 of the affidavit of Phua Siong Bee, the Secretary-General of the Union, are eligible to be members of the Union under rule 3(a) of the Rules and Constitution of the Union.

The objects of the Union are, *inter alia,*

"to secure the complete organisation and unity of all workers employed as Commercial House and Factory Employees and to promote industrial, social and intellectual interest of the members." (rule 2(a)).

Rule 3(a) of the Union's Rules and Constitution provides as follows:—

"The Union is open to all workers regardless of race, over the age of eighteen, who are employed as Commercial House and Factory Employees."

The applicant contends that the bus companies, the theatre and film companies and "bakery houses" set out in paragraph 7 of the affidavit of Phua Siong Bee fall within the scope of "Commercial House" and their employees are eligible to be members of the Union.

Mr. T. T. Rajah for the applicant contends that any company or firm having profit as their primary aim is a "Commercial House".